Background Note for the Safeguard Policy Review and Update: Lessons from ADB’s Accountability Mechanism

February 2022
I. **INTRODUCTION**

1. The Asian Development Bank (ADB) is undertaking a comprehensive review and update of its Safeguard Policy Statement, 2009 (SPS).\(^1\) The update process has been initiated by ADB Management following a Corporate Evaluation of the SPS by ADB’s Independent Evaluation Department (IED), completed in May 2020.\(^2\) The update will build off the findings and recommendations of the IED Report, which ADB Management endorsed. The update will seek to modernize the policy, considering the changing development context and evolving developing member country (DMC) and client needs and capacities; as well as opportunities for greater harmonization with the policy principles and standards of other multilateral financial institutions (MFI). The update will consider the diversity of ADB lending modalities and operations, including the private sector, as well as requirements for different contexts such as fragile and conflict affected situations (FCAS), small island developing states (SIDS) and emergency assistance. Overall, the policy update will seek to strengthen safeguard implementation effectiveness and efficiency, in ways that will enhance beneficial safeguards outcomes for the environment and affected people.

2. The revised safeguard policy is expected to be submitted for ADB Board for consideration in March 2023, following a process of further review, policy development and meaningful stakeholder engagement. ADB is undertaking a series of brief analytical studies across several topics\(^3\) which will inform the development of the provisions, procedures, and guidance materials for the new safeguard policy.\(^4\) Feedback from the accountability mechanism experience will be factored into the policy revision process.

3. **ADB’s Accountability Mechanism:** With development effectiveness as a prime concern, the Accountability Mechanism (Mechanism) of the Asian Development Bank has been established with a two-fold function, i.e., to respond to problems of people affected by ADB-assisted projects and to ensure compliance by ADB with its own operational policies and procedures. The 2012 Accountability Mechanism Policy (AMP) describes how ADB implements its responsibility towards the affected persons through an effective accountability mechanism by (i) outlining the role of each relevant party, including the operations departments (ODs), the Office of the Special Project Facilitator (OSPF), the Compliance Review Panel (with their respective support offices), the Office of the General Counsel, and the ADB Board of Directors; and (ii) setting out the process of each function of the Accountability Mechanism.

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\(^{4}\) The studies are intended to complement the evaluation completed by IED in May 2020 and will not duplicate IEDs work on the overall effectiveness of the SPS.
4. Through its more than 20 years of existence and with more than 140 complaints sent to it, the Mechanism has gathered lessons, most of which concern safeguards issues. Hence, role of the Accountability Mechanism becomes crucial for the updating of the Safeguards Policy Statement (SPS). The SPS update can benefit from lessons accruing from successes and challenges faced in projects that went through the Mechanism.

5. This consultation is being undertaken to solicit stakeholder feedback on the lessons learnt from Accountability Mechanism cases and how to incorporate them into the safeguards policy update.

II. LESSONS LEARNT FROM ADB’S ACCOUNTABILITY MECHANISM

A. Office of the Special Project Facilitator

6. The office of the Special Project Facilitator (SPF) leads the problem-solving function under the accountability mechanism and assists people directly, materially, and adversely affected by ADB-assisted projects in finding solutions to their problems. The Special Project Facilitator reports to the ADB President.

7. The OSPF Lessons Learned series documents grievance redress management experiences and identifies important lessons and good practices on problem-solving that are useful for future projects. Similar to the key findings in the 2018 Joint Learning Report\(^5\) are the following specific lessons:

a. Lessons on Grievance Redress Mechanism (GRM)-related consultation

- Increase the number of consultations with affected people (AP) highlighting GRM and problem-solving throughout the project cycle and use mechanisms easily accessible by APs;
- Delegate authority to handle certain category of complaints to field staff;
- Use techniques of social mobilization through community liaison experts to enhance project and GRM awareness; and
- Develop manuals on communication with APs.

b. Lessons on GRM Design and Implementation

- Integrate local grievance redress institutions into the project GRM design;

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• Formalize complaint registration and tracking through a common platform;
• Train project staff in complaints resolution;
• Use experience-sharing techniques to train field staff;
• At the agency level, allocate budget for staff training in complaint handling; and
• Provide for contingency funds to resolve conflict for unanticipated problems.

B. Office of the Compliance Review Panel

8. The Compliance Review Panel leads ADB’s compliance review function under the AM policy. The CRP focuses on complaints relating to any direct and material harm alleged by project affected people, and if it is caused by ADB’s violations of its operational policies and procedures in formulating, processing, or implementing the project. CRP is an independent body that reports directly to the ADB Board of Directors and is supported technically and administratively by the Office of the CRP.

9. The Lessons Learned from Compliance Reviews of the Asian Development Bank 2004–2020 is a series of publications prepared by the Office of the Compliance Review Panel examining compliance reviews for eight ADB-assisted projects between 2004–2020. Key lessons from these 8 projects are:

• Importance of the establishment of a comprehensive baseline data (with an emphasis on country’s socio-economic holistic view);
• Robust project due diligence including analysis of national safeguards related laws and assessment of the borrower’s capacity to implement ADB’s safeguards effectively. This is important to provide timely measures to fill gaps between ADB’s SPS and the borrowing country’s legal framework, if any;
• Allocation of adequate resources and skilled staff for safeguards implementation and corrective/remedial actions;
• Adequate identification of project affected people to ensure meaningful consultations together with provision for minimum standards for “meaningful consultations” leaving the room to customize as per the project needs;
• Continuous access to useful information ensuring project stakeholders, including the affected people receive up to date information throughout the project cycle and contribute to enhancing project design and benefits; and
• Highlighting compliance review as an instrument for ADB’s development effectiveness.

III. ISSUES FOR CONSIDERATION IN THE SPS UPDATE

10. The 2018 Joint Learning Report presents the following key findings relevant to the SPS update:

• Whether it was the main cause for a complaint or not, practically every complainant expressed dissatisfaction with project-level participation and/ or consultation during project preparation and implementation. This indicates that it would be worthwhile for ADB to invest in additional analytical work on the most effective approaches to participation and consultation for project-affected people, recognizing that there is often a lack of clarity at the time of project approval on who is affected and that changes in scope or design often result in
changes in affected people. At a minimum, there is a need for additional investments in capacity development for consultation/participation. Review of the complaints by project-affected people from ADB-assisted projects demonstrates the need for improved participation/consultation of project-affected people in a timely and meaningful way. An improved tracking system can help to identify where such participation/consultation might be lacking as a result of being aware of the number of complaints being raised at the project level, thus triggering the likelihood of issues regarding consultation/participation that should be addressed by the borrower/client, perhaps with the encouragement and support of the OD.

- A large fraction of complaints received by OSPF have not gone through the GRM process. Thus, improved monitoring and evaluation of complaints must be done to find ways on how to reduce the proportion of complaints that should have been directed to GRMs and/or ODs but are instead erroneously directed to the AM. Increased awareness raising among borrowers/clients of the AM requirements and of the right of the project-affected people to access the AM would improve this current dilemma.